

ASSEMBLY BILL

No. 1209

Introduced by Assembly Member Nakano

February 21, 2003

An act to amend and repeal Section 11126 of the Government Code, relating to open meetings.

LEGISLATIVE COUNSEL'S DIGEST

AB 1209, as introduced, Nakano. Bagley-Keene Open Meeting Act: closed sessions: security.

The Bagley-Keene Open Meeting Act, until January 1, 2006, authorizes a state body to hold closed sessions to consider matters posing a threat or potential threat of criminal or terrorist activity against the personnel, property, buildings, facilities, or equipment, including electronic data, owned, leased, or controlled by the state body, subject to specified conditions.

This bill instead would authorize a state body to hold closed sessions to consider matters posing a threat or potential threat of criminal or terrorist activity against the public, including, but not limited to, personnel, property, buildings, facilities, or equipment, including electronic data, owned, leased, under the jurisdiction of, or controlled by the state body, subject to these conditions. It would delete the repeal date of these provisions, thus making the authorization permanent.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 11126 of the Government Code, as amended by Section 1 of Chapter 1113 of the Statutes of 2002, is amended to read:

11126. (a) (1) Nothing in this article shall be construed to prevent a state body from holding closed sessions during a regular or special meeting to consider the appointment, employment, evaluation of performance, or dismissal of a public employee or to hear complaints or charges brought against that employee by another person or employee unless the employee requests a public hearing.

(2) As a condition to holding a closed session on the complaints or charges to consider disciplinary action or to consider dismissal, the employee shall be given written notice of his or her right to have a public hearing, rather than a closed session, and that notice shall be delivered to the employee personally or by mail at least 24 hours before the time for holding a regular or special meeting. If notice is not given, any disciplinary or other action taken against any employee at the closed session shall be null and void.

(3) The state body also may exclude from any public or closed session, during the examination of a witness, any or all other witnesses in the matter being investigated by the state body.

(4) Following the public hearing or closed session, the body may deliberate on the decision to be reached in a closed session.

(b) For the purposes of this section, “employee” does not include any person who is elected to, or appointed to a public office by, any state body. However, officers of the California State University who receive compensation for their services, other than per diem and ordinary and necessary expenses, shall, when engaged in that capacity, be considered employees. Furthermore, for purposes of this section, the term employee includes a person exempt from civil service pursuant to subdivision (e) of Section 4 of Article VII of the California Constitution.

(c) Nothing in this article shall be construed to do any of the following:

(1) Prevent state bodies that administer the licensing of persons engaging in businesses or professions from holding closed sessions to prepare, approve, grade, or administer examinations.

1 (2) Prevent an advisory body of a state body that administers
2 the licensing of persons engaged in businesses or professions from
3 conducting a closed session to discuss matters that the advisory
4 body has found would constitute an unwarranted invasion of the
5 privacy of an individual licensee or applicant if discussed in an
6 open meeting, provided the advisory body does not include a
7 quorum of the members of the state body it advises. Those matters
8 may include review of an applicant's qualifications for licensure
9 and an inquiry specifically related to the state body's enforcement
10 program concerning an individual licensee or applicant where the
11 inquiry occurs prior to the filing of a civil, criminal, or
12 administrative disciplinary action against the licensee or applicant
13 by the state body.

14 (3) Prohibit a state body from holding a closed session to
15 deliberate on a decision to be reached in a proceeding required to
16 be conducted pursuant to Chapter 5 (commencing with Section
17 11500) or similar provisions of law.

18 (4) Grant a right to enter any correctional institution or the
19 grounds of a correctional institution where that right is not
20 otherwise granted by law, nor shall anything in this article be
21 construed to prevent a state body from holding a closed session
22 when considering and acting upon the determination of a term,
23 parole, or release of any individual or other disposition of an
24 individual case, or if public disclosure of the subjects under
25 discussion or consideration is expressly prohibited by statute.

26 (5) Prevent any closed session to consider the conferring of
27 honorary degrees, or gifts, donations, and bequests that the donor
28 or proposed donor has requested in writing to be kept confidential.

29 (6) Prevent the Alcoholic Beverage Control Appeals Board
30 from holding a closed session for the purpose of holding a
31 deliberative conference as provided in Section 11125.

32 (7) (A) Prevent a state body from holding closed sessions with
33 its negotiator prior to the purchase, sale, exchange, or lease of real
34 property by or for the state body to give instructions to its
35 negotiator regarding the price and terms of payment for the
36 purchase, sale, exchange, or lease.

37 (B) However, prior to the closed session, the state body shall
38 hold an open and public session in which it identifies the real
39 property or real properties that the negotiations may concern and
40 the person or persons with whom its negotiator may negotiate.

1 (C) For purposes of this paragraph, the negotiator may be a
2 member of the state body.

3 (D) For purposes of this paragraph, “lease” includes renewal
4 or renegotiation of a lease.

5 (E) Nothing in this paragraph shall preclude a state body from
6 holding a closed session for discussions regarding eminent domain
7 proceedings pursuant to subdivision (e).

8 (8) Prevent the California Postsecondary Education
9 Commission from holding closed sessions to consider matters
10 pertaining to the appointment or termination of the Director of the
11 California Postsecondary Education Commission.

12 (9) Prevent the Council for Private Postsecondary and
13 Vocational Education from holding closed sessions to consider
14 matters pertaining to the appointment or termination of the
15 Executive Director of the Council for Private Postsecondary and
16 Vocational Education.

17 (10) Prevent the Franchise Tax Board from holding closed
18 sessions for the purpose of discussion of confidential tax returns
19 or information the public disclosure of which is prohibited by law,
20 or from considering matters pertaining to the appointment or
21 removal of the Executive Officer of the Franchise Tax Board.

22 (11) Require the Franchise Tax Board to notice or disclose any
23 confidential tax information considered in closed sessions, or
24 documents executed in connection therewith, the public disclosure
25 of which is prohibited pursuant to Article 2 (commencing with
26 Section 19542) of Chapter 7 of Part 10.2 of the Revenue and
27 Taxation Code.

28 (12) Prevent the Board of Corrections from holding closed
29 sessions when considering reports of crime conditions under
30 Section 6027 of the Penal Code.

31 (13) Prevent the State Air Resources Board from holding
32 closed sessions when considering the proprietary specifications
33 and performance data of manufacturers.

34 (14) Prevent the State Board of Education or the
35 Superintendent of Public Instruction, or any committee advising
36 the board or the superintendent, from holding closed sessions on
37 those portions of its review of assessment instruments pursuant to
38 Chapter 5 (commencing with Section 60600) of, or pursuant to
39 Chapter 8 (commencing with Section 60850) of, Part 33 of the
40 Education Code during which actual test content is reviewed and

discussed. The purpose of this provision is to maintain the confidentiality of the assessments under review.

(15) Prevent the California Integrated Waste Management Board or its auxiliary committees from holding closed sessions for the purpose of discussing confidential tax returns, discussing trade secrets or confidential or proprietary information in its possession, or discussing other data, the public disclosure of which is prohibited by law.

(16) Prevent a state body that invests retirement, pension, or endowment funds from holding closed sessions when considering investment decisions. For purposes of consideration of shareholder voting on corporate stocks held by the state body, closed sessions for the purposes of voting may be held only with respect to election of corporate directors, election of independent auditors, and other financial issues that could have a material effect on the net income of the corporation. For the purpose of real property investment decisions that may be considered in a closed session pursuant to this paragraph, a state body shall also be exempt from the provisions of paragraph (7) relating to the identification of real properties prior to the closed session.

(17) Prevent a state body, or boards, commissions, administrative officers, or other representatives that may properly be designated by law or by a state body, from holding closed sessions with its representatives in discharging its responsibilities under Chapter 10 (commencing with Section 3500), Chapter 10.3 (commencing with Section 3512), Chapter 10.5 (commencing with Section 3525), or Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 as the sessions relate to salaries, salary schedules, or compensation paid in the form of fringe benefits. For the purposes enumerated in the preceding sentence, a state body may also meet with a state conciliator who has intervened in the proceedings.

(18) (A) Prevent a state body from holding closed sessions to consider matters posing a threat or potential threat of criminal or terrorist activity against the *public, including, but not limited to, threats to* personnel, property, buildings, facilities, or equipment, including electronic data, owned, leased, *under the jurisdiction of,* or controlled by the state body, where disclosure of these considerations could compromise or impede the safety or security of the *public, including, but not limited to,* personnel, property,



1 buildings, facilities, or equipment, including electronic data,
2 owned, leased, *under the jurisdiction of*, or controlled by the state
3 body.

4 (B) Notwithstanding any other provision of law, a state body,
5 at any regular or special meeting, may meet in a closed session
6 pursuant to subparagraph (A) upon a two-thirds vote of the
7 members present at the meeting.

8 (C) After meeting in closed session pursuant to subparagraph
9 (A), the state body shall reconvene in open session prior to
10 adjournment and report that a closed session was held pursuant to
11 subparagraph (A), the general nature of the matters considered,
12 and whether any action was taken in closed session.

13 (D) After meeting in closed session pursuant to subparagraph
14 (A), the state body shall submit to the Legislative Analyst written
15 notification stating that it held this closed session, the general
16 reason or reasons for the closed session, the general nature of the
17 matters considered, and whether any action was taken in closed
18 session. The Legislative Analyst shall retain for no less than four
19 years any written notification received from a state body pursuant
20 to this subparagraph.

21 (d) (1) Notwithstanding any other provision of law, any
22 meeting of the Public Utilities Commission at which the rates of
23 entities under the commission's jurisdiction are changed shall be
24 open and public.

25 (2) Nothing in this article shall be construed to prevent the
26 Public Utilities Commission from holding closed sessions to
27 deliberate on the institution of proceedings, or disciplinary actions
28 against any person or entity under the jurisdiction of the
29 commission.

30 (e) (1) Nothing in this article shall be construed to prevent a
31 state body, based on the advice of its legal counsel, from holding
32 a closed session to confer with, or receive advice from, its legal
33 counsel regarding pending litigation when discussion in open
34 session concerning those matters would prejudice the position of
35 the state body in the litigation.

36 (2) For purposes of this article, all expressions of the
37 lawyer-client privilege other than those provided in this
38 subdivision are hereby abrogated. This subdivision is the
39 exclusive expression of the lawyer-client privilege for purposes of
40 conducting closed session meetings pursuant to this article. For



1 purposes of this subdivision, litigation shall be considered pending
2 when any of the following circumstances exist:

3 (A) An adjudicatory proceeding before a court, an
4 administrative body exercising its adjudicatory authority, a
5 hearing officer, or an arbitrator, to which the state body is a party,
6 has been initiated formally.

7 (B) (i) A point has been reached where, in the opinion of the
8 state body on the advice of its legal counsel, based on existing facts
9 and circumstances, there is a significant exposure to litigation
10 against the state body.

11 (ii) Based on existing facts and circumstances, the state body
12 is meeting only to decide whether a closed session is authorized
13 pursuant to clause (i).

14 (C) (i) Based on existing facts and circumstances, the state
15 body has decided to initiate or is deciding whether to initiate
16 litigation.

17 (ii) The legal counsel of the state body shall prepare and submit
18 to it a memorandum stating the specific reasons and legal authority
19 for the closed session. If the closed session is pursuant to paragraph
20 (1), the memorandum shall include the title of the litigation. If the
21 closed session is pursuant to subparagraph (A) or (B), the
22 memorandum shall include the existing facts and circumstances on
23 which it is based. The legal counsel shall submit the memorandum
24 to the state body prior to the closed session, if feasible, and in any
25 case no later than one week after the closed session. The
26 memorandum shall be exempt from disclosure pursuant to Section
27 6254.25.

28 (iii) For purposes of this subdivision, “litigation” includes any
29 adjudicatory proceeding, including eminent domain, before a
30 court, administrative body exercising its adjudicatory authority,
31 hearing officer, or arbitrator.

32 (iv) Disclosure of a memorandum required under this
33 subdivision shall not be deemed as a waiver of the lawyer-client
34 privilege, as provided for under Article 3 (commencing with
35 Section 950) of Chapter 4 of Division 8 of the Evidence Code.

36 (f) In addition to subdivisions (a), (b), and (c), nothing in this
37 article shall be construed to do any of the following:

38 (1) Prevent a state body operating under a joint powers
39 agreement for insurance pooling from holding a closed session to
40 discuss a claim for the payment of tort liability or public liability

1 losses incurred by the state body or any member agency under the
2 joint powers agreement.

3 (2) Prevent the examining committee established by the State
4 Board of Forestry and Fire Protection, pursuant to Section 763 of
5 the Public Resources Code, from conducting a closed session to
6 consider disciplinary action against an individual professional
7 forester prior to the filing of an accusation against the forester
8 pursuant to Section 11503.

9 (3) Prevent an administrative committee established by the
10 California Board of Accountancy pursuant to Section 5020 of the
11 Business and Professions Code from conducting a closed session
12 to consider disciplinary action against an individual accountant
13 prior to the filing of an accusation against the accountant pursuant
14 to Section 11503. Nothing in this article shall be construed to
15 prevent an examining committee established by the California
16 Board of Accountancy pursuant to Section 5023 of the Business
17 and Professions Code from conducting a closed hearing to
18 interview an individual applicant or accountant regarding the
19 applicant's qualifications.

20 (4) Prevent a state body, as defined in subdivision (b) of Section
21 11121, from conducting a closed session to consider any matter
22 that properly could be considered in closed session by the state
23 body whose authority it exercises.

24 (5) Prevent a state body, as defined in subdivision (d) of Section
25 11121, from conducting a closed session to consider any matter
26 that properly could be considered in a closed session by the body
27 defined as a state body pursuant to subdivision (a) or (b) of Section
28 11121.

29 (6) Prevent a state body, as defined in subdivision (c) of Section
30 11121, from conducting a closed session to consider any matter
31 that properly could be considered in a closed session by the state
32 body it advises.

33 (7) Prevent the State Board of Equalization from holding
34 closed sessions for either of the following:

35 (A) When considering matters pertaining to the appointment or
36 removal of the Executive Secretary of the State Board of
37 Equalization.

38 (B) For the purpose of hearing confidential taxpayer appeals or
39 data, the public disclosure of which is prohibited by law.



(8) Require the State Board of Equalization to disclose any action taken in closed session or documents executed in connection with that action, the public disclosure of which is prohibited by law pursuant to Sections 15619 and 15641 of this code and Sections 833, 7056, 8255, 9255, 11655, 30455, 32455, 38705, 38706, 43651, 45982, 46751, 50159, 55381, and 60609 of the Revenue and Taxation Code.

(9) Prevent the California Earthquake Prediction Evaluation Council, or other body appointed to advise the Director of the Office of Emergency Services or the Governor concerning matters relating to volcanic or earthquake predictions, from holding closed sessions when considering the evaluation of possible predictions.

(g) This article does not prevent either of the following:

(1) The Teachers' Retirement Board or the Board of Administration of the Public Employees' Retirement System from holding closed sessions when considering matters pertaining to the recruitment, appointment, employment, or removal of the chief executive officer or when considering matters pertaining to the recruitment or removal of the Chief Investment Officer of the State Teachers' Retirement System or the Public Employees' Retirement System.

(2) The Commission on Teacher Credentialing from holding closed sessions when considering matters relating to the recruitment, appointment, or removal of its executive director.

~~(h) This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2006, deletes or extends that date.~~

SEC. 2. Section 11126 of the Government Code, as added by Section 2 of Chapter 1113 of the Statutes of 2002, is repealed.

~~11126. (a) (1) Nothing in this article shall be construed to prevent a state body from holding closed sessions during a regular or special meeting to consider the appointment, employment, evaluation of performance, or dismissal of a public employee or to hear complaints or charges brought against that employee by another person or employee unless the employee requests a public hearing.~~

~~(2) As a condition to holding a closed session on the complaints or charges to consider disciplinary action or to consider dismissal, the employee shall be given written notice of his or her right to~~

1 have a public hearing, rather than a closed session, and that notice
2 shall be delivered to the employee personally or by mail at least 24
3 hours before the time for holding a regular or special meeting. If
4 notice is not given, any disciplinary or other action taken against
5 any employee at the closed session shall be null and void.

6 (3) The state body also may exclude from any public or closed
7 session, during the examination of a witness, any or all other
8 witnesses in the matter being investigated by the state body.

9 (4) Following the public hearing or closed session, the body
10 may deliberate on the decision to be reached in a closed session.

11 (b) For the purposes of this section, “employee” does not
12 include any person who is elected to, or appointed to a public office
13 by, any state body. However, officers of the California State
14 University who receive compensation for their services, other than
15 per diem and ordinary and necessary expenses, shall, when
16 engaged in that capacity, be considered employees. Furthermore,
17 for purposes of this section, the term employee includes a person
18 exempt from civil service pursuant to subdivision (e) of Section 4
19 of Article VII of the California Constitution.

20 (c) Nothing in this article shall be construed to do any of the
21 following:

22 (1) Prevent state bodies that administer the licensing of persons
23 engaging in businesses or professions from holding closed
24 sessions to prepare, approve, grade, or administer examinations.

25 (2) Prevent an advisory body of a state body that administers
26 the licensing of persons engaged in businesses or professions from
27 conducting a closed session to discuss matters that the advisory
28 body has found would constitute an unwarranted invasion of the
29 privacy of an individual licensee or applicant if discussed in an
30 open meeting, provided the advisory body does not include a
31 quorum of the members of the state body it advises. Those matters
32 may include review of an applicant’s qualifications for licensure
33 and an inquiry specifically related to the state body’s enforcement
34 program concerning an individual licensee or applicant where the
35 inquiry occurs prior to the filing of a civil, criminal, or
36 administrative disciplinary action against the licensee or applicant
37 by the state body.

38 (3) Prohibit a state body from holding a closed session to
39 deliberate on a decision to be reached in a proceeding required to

1 ~~be conducted pursuant to Chapter 5 (commencing with Section~~
2 ~~11500) or similar provisions of law.~~

3 ~~(4) Grant a right to enter any correctional institution or the~~
4 ~~grounds of a correctional institution where that right is not~~
5 ~~otherwise granted by law, nor shall anything in this article be~~
6 ~~construed to prevent a state body from holding a closed session~~
7 ~~when considering and acting upon the determination of a term,~~
8 ~~parole, or release of any individual or other disposition of an~~
9 ~~individual case, or if public disclosure of the subjects under~~
10 ~~discussion or consideration is expressly prohibited by statute.~~

11 ~~(5) Prevent any closed session to consider the conferring of~~
12 ~~honorary degrees, or gifts, donations, and bequests that the donor~~
13 ~~or proposed donor has requested in writing to be kept confidential.~~

14 ~~(6) Prevent the Alcoholic Beverage Control Appeals Board~~
15 ~~from holding a closed session for the purpose of holding a~~
16 ~~deliberative conference as provided in Section 11125.~~

17 ~~(7) (A) Prevent a state body from holding closed sessions with~~
18 ~~its negotiator prior to the purchase, sale, exchange, or lease of real~~
19 ~~property by or for the state body to give instructions to its~~
20 ~~negotiator regarding the price and terms of payment for the~~
21 ~~purchase, sale, exchange, or lease.~~

22 ~~(B) However, prior to the closed session, the state body shall~~
23 ~~hold an open and public session in which it identifies the real~~
24 ~~property or real properties that the negotiations may concern and~~
25 ~~the person or persons with whom its negotiator may negotiate.~~

26 ~~(C) For purposes of this paragraph, the negotiator may be a~~
27 ~~member of the state body.~~

28 ~~(D) For purposes of this paragraph, “lease” includes renewal~~
29 ~~or renegotiation of a lease.~~

30 ~~(E) Nothing in this paragraph shall preclude a state body from~~
31 ~~holding a closed session for discussions regarding eminent domain~~
32 ~~proceedings pursuant to subdivision (c).~~

33 ~~(8) Prevent the California Postsecondary Education~~
34 ~~Commission from holding closed sessions to consider matters~~
35 ~~pertaining to the appointment or termination of the Director of the~~
36 ~~California Postsecondary Education Commission.~~

37 ~~(9) Prevent the Council for Private Postsecondary and~~
38 ~~Vocational Education from holding closed sessions to consider~~
39 ~~matters pertaining to the appointment or termination of the~~

~~Executive Director of the Council for Private Postsecondary and Vocational Education.~~

~~(10) Prevent the Franchise Tax Board from holding closed sessions for the purpose of discussion of confidential tax returns or information the public disclosure of which is prohibited by law, or from considering matters pertaining to the appointment or removal of the Executive Officer of the Franchise Tax Board.~~

~~(11) Require the Franchise Tax Board to notice or disclose any confidential tax information considered in closed sessions, or documents executed in connection therewith, the public disclosure of which is prohibited pursuant to Article 2 (commencing with Section 19542) of Chapter 7 of Part 10.2 of the Revenue and Taxation Code.~~

~~(12) Prevent the Board of Corrections from holding closed sessions when considering reports of crime conditions under Section 6027 of the Penal Code.~~

~~(13) Prevent the State Air Resources Board from holding closed sessions when considering the proprietary specifications and performance data of manufacturers.~~

~~(14) Prevent the State Board of Education or the Superintendent of Public Instruction, or any committee advising the board or the superintendent, from holding closed sessions on those portions of its review of assessment instruments pursuant to Chapter 5 (commencing with Section 60600) of, or pursuant to Chapter 8 (commencing with Section 60850) of, Part 33 of the Education Code during which actual test content is reviewed and discussed. The purpose of this provision is to maintain the confidentiality of the assessments under review.~~

~~(15) Prevent the California Integrated Waste Management Board or its auxiliary committees from holding closed sessions for the purpose of discussing confidential tax returns, discussing trade secrets or confidential or proprietary information in its possession, or discussing other data, the public disclosure of which is prohibited by law.~~

~~(16) Prevent a state body that invests retirement, pension, or endowment funds from holding closed sessions when considering investment decisions. For purposes of consideration of shareholder voting on corporate stocks held by the state body, closed sessions for the purposes of voting may be held only with respect to election of corporate directors, election of independent~~

1 auditors, and other financial issues that could have a material effect
2 on the net income of the corporation. For the purpose of real
3 property investment decisions that may be considered in a closed
4 session pursuant to this paragraph, a state body shall also be
5 exempt from the provisions of paragraph (7) relating to the
6 identification of real properties prior to the closed session.

7 (17) Prevent a state body, or boards, commissions,
8 administrative officers, or other representatives that may properly
9 be designated by law or by a state body, from holding closed
10 sessions with its representatives in discharging its responsibilities
11 under Chapter 10 (commencing with Section 3500), Chapter 10.3
12 (commencing with Section 3512), Chapter 10.5 (commencing
13 with Section 3525), or Chapter 10.7 (commencing of Section
14 3540) of Division 4 of Title 1 as the sessions relate to salaries,
15 salary schedules, or compensation paid in the form of fringe
16 benefits. For the purposes enumerated in the preceding sentence,
17 a state body may also meet with a state conciliator who has
18 intervened in the proceedings.

19 (d) (1) Notwithstanding any other provision of law, any
20 meeting of the Public Utilities Commission at which the rates of
21 entities under the commission's jurisdiction are changed shall be
22 open and public.

23 (2) Nothing in this article shall be construed to prevent the
24 Public Utilities Commission from holding closed sessions to
25 deliberate on the institution of proceedings, or disciplinary actions
26 against any person or entity under the jurisdiction of the
27 commission.

28 (e) (1) Nothing in this article shall be construed to prevent a
29 state body, based on the advice of its legal counsel, from holding
30 a closed session to confer with, or receive advice from, its legal
31 counsel regarding pending litigation when discussion in open
32 session concerning those matters would prejudice the position of
33 the state body in the litigation.

34 (2) For purposes of this article, all expressions of the
35 lawyer-client privilege other than those provided in this
36 subdivision are hereby abrogated. This subdivision is the
37 exclusive expression of the lawyer-client privilege for purposes of
38 conducting closed session meetings pursuant to this article. For
39 purposes of this subdivision, litigation shall be considered pending
40 when any of the following circumstances exist:

~~(A) An adjudicatory proceeding before a court, an administrative body exercising its adjudicatory authority, a hearing officer, or an arbitrator, to which the state body is a party, has been initiated formally.~~

~~(B) (i) A point has been reached where, in the opinion of the state body on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the state body.~~

~~(ii) Based on existing facts and circumstances, the state body is meeting only to decide whether a closed session is authorized pursuant to clause (i).~~

~~(C) (i) Based on existing facts and circumstances, the state body has decided to initiate or is deciding whether to initiate litigation.~~

~~(ii) The legal counsel of the state body shall prepare and submit to it a memorandum stating the specific reasons and legal authority for the closed session. If the closed session is pursuant to paragraph (1), the memorandum shall include the title of the litigation. If the closed session is pursuant to subparagraph (A) or (B), the memorandum shall include the existing facts and circumstances on which it is based. The legal counsel shall submit the memorandum to the state body prior to the closed session, if feasible, and in any case no later than one week after the closed session. The memorandum shall be exempt from disclosure pursuant to Section 6254.25.~~

~~(iii) For purposes of this subdivision, "litigation" includes any adjudicatory proceeding, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator.~~

~~(iv) Disclosure of a memorandum required under this subdivision shall not be deemed as a waiver of the lawyer-client privilege, as provided for under Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code.~~

~~(f) In addition to subdivisions (a), (b), and (c), nothing in this article shall be construed to do any of the following:~~

~~(1) Prevent a state body operating under a joint powers agreement for insurance pooling from holding a closed session to discuss a claim for the payment of tort liability or public liability losses incurred by the state body or any member agency under the joint powers agreement.~~

1 ~~(2) Prevent the examining committee established by the State~~
2 ~~Board of Forestry and Fire Protection, pursuant to Section 763 of~~
3 ~~the Public Resources Code, from conducting a closed session to~~
4 ~~consider disciplinary action against an individual professional~~
5 ~~forester prior to the filing of an accusation against the forester~~
6 ~~pursuant to Section 11503.~~

7 ~~(3) Prevent an administrative committee established by the~~
8 ~~California Board of Accountancy pursuant to Section 5020 of the~~
9 ~~Business and Professions Code from conducting a closed session~~
10 ~~to consider disciplinary action against an individual accountant~~
11 ~~prior to the filing of an accusation against the accountant pursuant~~
12 ~~to Section 11503. Nothing in this article shall be construed to~~
13 ~~prevent an examining committee established by the California~~
14 ~~Board of Accountancy pursuant to Section 5023 of the Business~~
15 ~~and Professions Code from conducting a closed hearing to~~
16 ~~interview an individual applicant or accountant regarding the~~
17 ~~applicant's qualifications.~~

18 ~~(4) Prevent a state body, as defined in subdivision (b) of Section~~
19 ~~11121, from conducting a closed session to consider any matter~~
20 ~~that properly could be considered in closed session by the state~~
21 ~~body whose authority it exercises.~~

22 ~~(5) Prevent a state body, as defined in subdivision (d) of Section~~
23 ~~11121, from conducting a closed session to consider any matter~~
24 ~~that properly could be considered in a closed session by the body~~
25 ~~defined as a state body pursuant to subdivision (a) or (b) of Section~~
26 ~~11121.~~

27 ~~(6) Prevent a state body, as defined in subdivision (e) of Section~~
28 ~~11121, from conducting a closed session to consider any matter~~
29 ~~that properly could be considered in a closed session by the state~~
30 ~~body it advises.~~

31 ~~(7) Prevent the State Board of Equalization from holding~~
32 ~~closed sessions for either of the following:~~

33 ~~(A) When considering matters pertaining to the appointment or~~
34 ~~removal of the Executive Secretary of the State Board of~~
35 ~~Equalization.~~

36 ~~(B) For the purpose of hearing confidential taxpayer appeals or~~
37 ~~data, the public disclosure of which is prohibited by law.~~

38 ~~(8) Require the State Board of Equalization to disclose any~~
39 ~~action taken in closed session or documents executed in~~
40 ~~connection with that action, the public disclosure of which is~~

1 prohibited by law pursuant to Sections 15619 and 15641 of this
2 code and Sections 833, 7056, 8255, 9255, 11655, 30455, 32455,
3 38705, 38706, 43651, 45982, 46751, 50159, 55381, and 60609 of
4 the Revenue and Taxation Code.

5 ~~(9) Prevent the California Earthquake Prediction Evaluation~~
6 ~~Council, or other body appointed to advise the Director of the~~
7 ~~Office of Emergency Services or the Governor concerning matters~~
8 ~~relating to volcanic or earthquake predictions, from holding closed~~
9 ~~sessions when considering the evaluation of possible predictions.~~

10 ~~(g) This article does not prevent either of the following:~~

11 ~~(1) The Teachers' Retirement Board or the Board of~~
12 ~~Administration of the Public Employees' Retirement System from~~
13 ~~holding closed sessions when considering matters pertaining to the~~
14 ~~recruitment, appointment, employment, or removal of the chief~~
15 ~~executive officer or when considering matters pertaining to the~~
16 ~~recruitment or removal of the Chief Investment Officer of the State~~
17 ~~Teachers' Retirement System or the Public Employees'~~
18 ~~Retirement System.~~

19 ~~(2) The Commission on Teacher Credentialing from holding~~
20 ~~closed sessions when considering matters relating to the~~
21 ~~recruitment, appointment, or removal of its executive director.~~

22 ~~(h) This section shall become operative on January 1, 2006.~~